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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,328	07/06/1999	SATOSHI MIKAMI	KINOSHITACA	4999
7590 02/14/2005 FLYNN THIEL BOUTELL & TANIS 2026 RAMBLING ROAD KALAMAZOO, MI 490081699			EXAMINER CHANNAVAJALA, LAKSHMI SARADA	
			ART UNIT 1615	PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/341,328
Filing Date: July 06, 1999
Appellant(s): MIKAMI ET AL.

Terryence Chapman
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the supplemental appeal brief filed 2-26-04.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that all claims stand or fall together.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(9) Prior Art of Record

5,776,497	Langrange et al.	7-1998
5,496,544	Mellul et al.	3-1996

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 12-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,496,544 to Mellul et al.

Mellul et al. discloses a cosmetic composition for skin consisting of a powder and a silicone resin mixture (abstract). Mellul et al. further teach that face powders and the like usually consist of colored or non-colored powders and a fatty binder, which is then applied to the skin by means of an applicator such as a sponge, powder puff or brush (c 1, l 13-23). Mellul et al. discloses a cosmetic composition with a powder comprising a solid particulate phase mixed with a fatty binder containing a silicone mixture (c 2, l 48-58). Mellul et al. teach an organic powder, which suggests applicant's claim to a natural organic powder. It is the position of the examiner that the term organic can be interpreted to mean natural, being that organic can be defined as something derived from living organisms. Therefore, Mellul et al.'s teachings to any organic powder render applicant's claims obvious. Additionally, the examiner refers to column 6, line 9 of the reference, which teaches that starch can be included in the powder composition as filler. Starch is a natural, organic material, and therefore fulfills the requirement for a natural, organic material in the powder composition. Furthermore applicant's claims 24-29 include specific examples of what applicant is referring to as a natural, organic powder. This list includes cellulose and collagen, among others, and is therefore rendered obvious by Mellul et al. 's

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teaching of starch, as well as the teaching in column 6, line 56, where Mellul et al. teach that collagen can be included in the powder composition.

It is the position of the examiner that Mellul et al.'s invention reads on applicant's claims. Applicant is claiming an applicator with a powder adhered to the side which will touch the skin. Mellul et al. teach that powder puffs, applicators, and sponges are well known in the cosmetic art to apply facial powder and the like to the skin. Further, applicant claims that the powder adheres to the applicator through a treatment with a resin mixture. Mellul et al. teach a powder mixed with a silicone resin mixture (weight percents discussed in c 2, l 61), and teaches that it is applied to the skin in the usual methods (c 7, l 51-52). Mellul et al. do not teach the specific particle size of the powder. However, it is the position of the examiner that the specific particle size is a limitation that would be routinely determined by one of ordinary skill in the art, through minimal experimentation, as being suitable, absent the presentation of some unusual and/or unexpected results. The results must be those that accrue from the specific limitations. Therefore, it is the position of the examiner that one of ordinary skill in the art would have been motivated to use a well known applicator (as discussed by Mellul et al.) to apply a cosmetic composition comprising a powder and a silicone resin mixture, as taught by Mellul et al. One of ordinary skill in the art would expect an improved cosmetic composition. Therefore, this invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

2. Claims 12-41, and new claim 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,776,497 to Lagrange et al.

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Lagrange et al. disclose a mineral or organic particle based product, wherein the product is a powder, which consists of mineral or organic particles smaller than 200 microns (abstract). Lagrange et al. further teach that the product is to be used in cosmetics (c 1, l 10, and the reference specifically discusses the formulation's use as a powder to be applied with a powder puff or a brush (c 14, ex. 7). Although Lagrange et al. teach in general that the particles be less than 200 microns, the reference further teaches that the particles, in particular be between 1 and 20 microns (c 4, l 46). Furthermore, Lagrange et al. teach that substances such as chitin, cellulose, wool, and silk can all be included in the composition (c 5, l 35-44). Additionally, Lagrange et al. teaches that the makeup compositions of the present invention can also contain thickeners, and anionic and cationic substances (c 9, l 23-24). It is the position of the examiner that the teachings of Lagrange et al. suggest the limitations of applicant's instant claims. Although Lagrange et al. do not use the language "firmly adhered" to, for the same reasons discussed in the first rejection, this is not considered to patentably distinguish the art from the instant applicant. One of ordinary skill in the art would look to the teachings of Lagrange et al. to formulate a cosmetic composition comprising an applicator, and a powdered substance wherein the powdered substance is firmly adhered to the applicator. Without firm adherence, the applicator would not function as desired. Therefore, this invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made.

(11) Response to Argument

Applicant's arguments filed in Appeal Brief dated 10-14-03 and supplemental Appeal Brief dated 2-26-04 have been fully considered but they are not persuasive.

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Applicants arguments regarding the rejection of claims over Mellul et al have been considered and were addressed in detail in the Examiner's Answer dated 10-27-04.

LAGRANGE et al :

Applicants argue that Lagrange et al reference discloses a cosmetic powder comprising a mineral or organic particle-based product comprising an indoline, where the mineral or organic particles are smaller than 200 microns and the indoline product obtained by oxidative polymerization and is used for making up the skin and the exoskeleton and for protecting the human epidermis against UV radiation. It is argued that although this reference discloses that the inventive powder can be applied with a powder puff or brush, there is no disclosure in this reference regarding the powder being firmly adhered to a side of a base layer. Applicants argue that there is nothing in Lagrange et al to suggest that the powder disclosed there is firmly adhered to a base layer. Further it is argued that such an interpretation of the disclosure of Lagrange et al would in fact destroy the object of this reference since the powder disclosed there is a cosmetic preparation, which is to be applied to the skin and/or exoskeleton. Therefore, applicants conclude that Lagrange et al reference does not disclose the presently claimed invention.

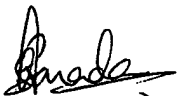
Applicants' arguments have been considered but not found persuasive because the term firmly adhered is relative and as explained in the rejection above, without adherence the applicator of Lagrange would not function as desired. In this regard, it is agreed by applicants that Lagrange also teaches cosmetic composition for skin application, i.e., make up product such as mascara or eyelash products etc (col. 8, lines 49-60), which is similar to instant invention. With respect to the argument that examiner interpretation would destroy the object of Lagrange

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reference, applicants have not provided any rationale as to why the object of Lagrange would be destroyed when in fact Lagrange also desires cosmetic application of powder particles to skin, similar to the instant invention. Therefore, the rejection has been maintained.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Lakshmi S Channavajjala
Examiner
Art Unit 1615
February 10, 2005

THURMAN K. PAGE, M.A., J.D.
SUPERVISORY PATENT EXAMINER



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